

EXHIBIT 16

WORKFORCE INVESTMENT NOTICE: 01-15

SUBJECT: Customized Training and On-the-Job Training

DATE: February 20, 2002

I. PURPOSE: Workforce Investment Notice 00-14 dated October 24, 2000, provided you with guidance on contracted training for Adults and Dislocated Workers. That WIN covered three areas, specifically OJT, Customized Training and Classroom Training.

Since the issuance of 00-14, many discussions have taken place and numerous questions have arisen concerning the use of OJT and Customized Training as a method of training Adults and Dislocated Workers.

This WIN will provide you with additional guidance for contracting in these two areas of training.

II. REFERENCES: Workforce Investment Act Section 101(8); 101(31); 122(h); 134(d)(4)(G)(ii)(I); 181(a)(1)(A); 181(a)(2); 181(d); 188; 195(4); Regulations 663.310; 663.430; 663.595; 663.700 - 730; 667.264; 667.268; 667.270 – 275; 29 CFR Part 37. Workforce Investment Notice 00-14.

III. OVERVIEW: The following policy guidelines represent the State's understanding of OJT contracts and customized training agreements as stated by WIA Law and Regulations. This policy represents the basis of the State's oversight of OJT and customized training. OJT contracts and customized training agreements may be written for unemployed as well as employed workers. OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training program participants. OJT payments are also considered to be compensation for the lower productivity of participants. Customized training is training designed to meet the needs of a specific employer(s). The employer must commit to employ or continue to employ the worker(s) upon successful completion of the training.

Employers are not required to document the extraordinary costs or the cost of lower productivity associated with OJT.

IV. ON-THE-JOB-TRAINING (OJT) OJT is defined at WIA section 101(31) and is one of the exceptions to the requirement under WIA to establish an Individual Training Account (ITA) for eligible individuals to finance training services. OJT must be provided through a written contractual arrangement as an exception to

the ITA requirement. OJT contracts may be written with employers in the private sector, the private non-profit sector, and public employers. The OJT contract must identify the occupation, the skills and competencies to be learned, and the length of time the training will be provided. The OJT contract is a training alternative suitable for participants who may prefer a "hands-on" learning environment to a classroom situation. OJT also provides a good incentive for employers to hire and train an individual for an occupation not requiring classroom-situated learning.

The reimbursement to the employer is compensation for the extraordinary costs associated with the training of participants. Some of these costs include more intense supervision, above average material wastage, abnormal wear on tools, down time, and a lower rate of production. The OJT participant/employee is considered to be an employee on a "hire-first and train-later" basis. The participant/employee must receive wages and fringe benefits equal to those similarly employed by the employer. The reimbursement is not a wage subsidy. It is a reimbursement of the extraordinary costs of training incurred by the employer in preparing the employee for successful entry-level employment. It is expected that the participant/employee will be retained on a full time basis after the reimbursement ends. It is also expected that the participant/employee will continue to receive compensation and benefits commensurate with job performance.

An OJT activity does not preclude a participant trained by one employer from ultimately being placed in a comparable, training-related position with another employer. Nor does it preclude other types of training such as classroom or literacy training in conjunction with the OJT. An OJT contract is limited to the time required to become proficient in the occupation for which the training is being provided. To determine the appropriate length of the contract, consideration should be given to recognized reference materials such as the Dictionary of Occupational Titles (DOT), the Standard Vocational Profile (SVP), the skill requirements of the occupation, the education and skill level of the participant, previous work experience, and the participant's individual employment plan. The contract must specify that the training is being provided to the participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate the employer for the extraordinary costs associated with training the participant(s). As noted above, employers are not required to document the extraordinary cost actually incurred.

As indicated above, the length of training must be determined by an accurate assessment of the job difficulty, the participant's skill and education, previous work experience, discussions with the employer, and the Individual Employment Plan (IEP). The level of difficulty is determined from an assessment of the job description. If the job requires the repair of machinery, a determination needs to be made of tools needed, the precision needed to use the tools successfully, skills needed to diagnose problems, and the training needed to successfully

disassemble and reassemble parts. The DOT code and the SVP can be useful tools in determining the length of training. However, these two reference materials should not be relied upon exclusively, at the risk of overlooking the needs, skills, and abilities of the participant.

The information gathered is used to design a training outline that becomes the work statement of the contract and followed as a guide when delivering the training. The training outline is also useful for determining whether services contracted for are delivered. Once skills have been identified and a method for measuring them has been established, progress can be determined.

The development of successful training outlines depends on the ability to analyze job duties for skills required to perform specific job duties. While basic skills such as reading comprehension and the ability to perform mathematics may be prerequisites for a successful training outcome, the skills needed to read a precision instrument, analyze a blue print, or assemble a mechanical device may be skills that can only be learned under the instruction of an experienced practitioner while on the job. The training outline is the planning tool that enables a successful training outcome to occur.

The participant's IEP must document how the length of training was determined. The IEP must also include justification for a length of training exceeding what may be considered an appropriate training time based on consideration of reference materials, skills, education, and prior work experience.

As noted above, the maximum reimbursement of wages paid is 50 percent. It is also understood that reimbursement does not include hours of non-work such as paid holidays, vacation, sick days, time spent on jury duty, etc. OJT payments to employers may include scheduled pay raises or regular pay increases. Overtime work and jobs paying on the basis of commissions, incentives, or piece-rate are not appropriate for OJT. The purpose of overtime is to make up production shortages where training would not be expected to occur. Commissioned jobs require independence with little time for training other than what might be provided to all employees. Piece-rate assumes the worker has sufficient training to meet the required quota or production rate and that no additional training is required.

A. Contract Provisions

OJT contracts must contain the following provisions:

1. OJT contracts entered into between the WIA, its agent, and an employer must include a provision stating that all costs contained in the contract represent only those costs which are over and above normal recruitment and training expenses of the employer. The costs (extraordinary) for which the employer will be reimbursed (increased material wastage, lost time, and additional supervisory

time) must be specified in the contract along with the method used to determine these costs.

2. OJT contracts must specify: **a)** the occupation for which training is to be provided; **b)** the number of participants to be trained; **c)** the wage rate; **d)** the method and maximum amount of reimbursement; **e)** job description and a training outline including training hours by skill areas or tasks; and **f)** separate classroom training or ancillary items that may be needed.

The cost of providing classroom training away from the work site, as well as any ancillary items, or supportive services should be shown separately.

The OJT contract must include a copy of the job description and the training outline. The description and training outline, including skills to be learned on the job and the time necessary to learn each skill, must be sufficiently specific to permit verification that training was provided in accordance with the contract.

3. OJT contracts are to contain appropriate assurances and certifications including:

a. compensation for the participant at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Such rates may not be less than the highest of the federal or State minimum wage.

b. maintenance, retention, and access to records by WIA, State, and USDOL personnel to support the training activity and associated reimbursements, i.e., time and attendance records, payroll records, invoice and reimbursement documents, and other information necessary to respond to monitoring reviews or audits (documentation of extraordinary costs are not required);

c. prohibition on the use or proposed use of WIA funds as an inducement to a business or part of a business to relocate if the relocation results in any employee losing his/her job at the original location;

d. prohibition on the use or proposed use of WIA training funds on any business or part of a business that has relocated from any location in the U.S., until the company has operated at the new location for 120 days, if the relocation resulted in any employee losing his/her job at the previous location.

e. prohibition on displacement;

f. prohibition on impairment of existing contracts;

g. prohibition on payment of wages to incumbent employees using WIA funds;

- h. provision of benefits and working conditions at the same level and extent as other employees of similar longevity and doing the same type of work;
- i. health and safety standards under federal and State law equally applicable to OJT participants;
- j. provision of workers compensation;
- k. non-discrimination and prohibition against sectarian activities;
- l. prohibition on use of funds to assist, promote, or deter union organizing;
- m. prohibition against political activity and lobbying;
- n. provision for union concurrence;
- o. prohibition on the use of funds for construction except for provision of reasonable accessibility and accommodation;
- p. prohibition on the use of WIA Title I funds for foreign travel;
- r. Americans with Disabilities Act;
- s. modification conditions and requirements;
- t. contract termination conditions; and,
- u. expenses and activities prohibited under any other Federal, State, or local law or regulation.

B. Eligible Participants

Only those individuals who meet the eligibility requirements for intensive services, who have received an assessment and for whom an IEP has been developed may be considered for OJT. An individual referred to the **NetworkRI** Center by an employer may be considered for OJT with the employer only after the individual has met eligibility requirements for intensive services and has received an assessment, and an IEP has been developed.

OJT contracts may be written for eligible employed workers when:

1. The employed individual is not earning a self-sufficient wage as determined by the Local Board;
2. The reimbursement to the employer does not exceed 50 percent of the wage rate;

3. The contract is not with an employer who fails to provide OJT participants with long-term employment at wages and benefits comparable to those of non-OJT employees. OJT employers who fail to retain OJT participants must provide satisfactory explanation (tardiness, absenteeism, etc.);

4. The contract specifies a training time period required for the participant/employee to gain proficiency in the occupation for which the training is being provided; and,

5. The OJT relates to the introduction of new technologies, new products or service procedures, upgrading to new jobs that require new skills, workplace literacy, or other purposes identified by the Local Board.

C. Eligible Employers

An employer who does not retain the participant with wages, benefits, and working conditions equal to those provided to other regular employees doing the same work must not be considered for additional OJT contracts. The WIA must be assured that an employed worker was not intentionally hired at a wage less than self-sufficiency for the purpose of securing an OJT contract.

V. CUSTOMIZED TRAINING: Customized training is another exception to the requirement under WIA to establish an ITA for eligible individuals to finance training services.

Customized Training is training:

- designed to meet the special requirements of an employer or a group of employers;
- conducted with a commitment by the employer(s) to employ, or in the case of an incumbent worker, continue to employ, an individual upon successful completion of the training; and,
- for which the employer pays not less than 50 percent of the cost of the training.

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

- the employee(s) is/are not earning a self-sufficient wage as determined by Local Board policy;
- the above requirements for customized training are met; and,
- the customized training relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new

jobs requiring additional skills, workplace literacy, or other purposes identified by the Local Board.

The customized training agreement must identify the occupation(s), the skills and competencies to be learned, and the length of time the training will be provided. The agreement must specify that the employer will pay for not less than 50 percent of the cost of the training.

As noted above, customized training may be developed for an employer who is hiring new employees as well as those currently employed by the employer. As in the OJT contract, the length of the training must be determined by an assessment of the job difficulty, the participants' skills, education, previous work experience, and discussions with the employer.

Information gathered is used to design a training outline that will become the work statement of the agreement and followed as a guide when delivering the training.

A. Customized Training Agreement Provisions

1. Agreements must specify: **a)** the occupation for which training will be provided; **b)** the number of participants to be trained; **c)** the method and maximum amount of reimbursement; **d)** job description(s) and a training outline; and **e)** the cost of any ancillary items or supportive services that may be needed.
2. The cost of any ancillary items or supportive services should be shown separately.
3. The job description(s) and training outline must be sufficiently specific to permit verification that training was provided in accordance with the agreement.
4. Customized training agreements are to contain appropriate assurances and certifications as specified under the OJT contract provisions.

B. Eligible Participants

Only those individuals who have met the eligibility requirements for intensive services, have received an assessment, and for whom an IEP has been developed may be considered for training under a customized training agreement. An individual referred to the **NetworkRI** Center by an employer, including those who may already employed by the employer, may be considered for training only after meeting eligibility requirements.

C. Eligible Employers

A WIA must not enter into a customized training agreement with an employer who fails to retain individuals, without satisfactory explanation (tardiness, absenteeism, etc), after successful completion of the training. An employer who does not hire or retain the participant/employee with wages, benefits, and

working conditions equal to those provided other regular employees doing the same or similarly situated work must not be considered for additional training agreements.